

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

<b>In re:</b>	)	
	)	
<b>Fairfield Sentry Limited, <i>et al.</i>,</b>	)	<b>Chapter 15 Case</b>
	)	
<b>Debtors in Foreign Proceedings.</b>	)	<b>Case No. 10-13164 (SMB)</b>
	)	
	)	<b>Jointly Administered</b>
	)	
<b>Fairfield Sentry Limited (In</b>	)	
<b>Liquidation), <i>et al.</i>, acting by</b>	)	
<b>and through the Foreign</b>	)	<b>Adv. Pro. No. 10-03496 (SMB)</b>
<b>Representatives thereof,</b>	)	
<b>Plaintiffs,</b>	)	<b>Administratively Consolidated</b>
	)	
<b>-against-</b>	)	
	)	
<b>Theodoor GGC Amsterdam, <i>et al.</i>,</b>	)	
<b>Defendants.</b>	)	
	)	
	)	
	)	
	)	
<b>This attorney declaration applies to</b>	)	
<b>the Adversary Proceedings listed on</b>	)	
<b>Exhibit 1</b>	)	

**ATTORNEY DECLARATION OF  
D. FARRINGTON YATES IN SUPPORT OF THE SWISS AND  
MONEGASQUE EFG DEFENDANTS' SUPPLEMENTAL MEMORANDUM  
OF LAW IN SUPPORT OF DEFENDANTS' RENEWED MOTION TO DISMISS**

I, D. Farrington Yates, declare under penalty of perjury as follows:

1. I am duly licensed and admitted to practice law in the State of New York, and I am a partner with the law firm of Kobre & Kim LLP, counsel for the following Defendants: EFG Bank a/k/a EFG Bank AG and/or EFG Bank SA; EFG Private Bank SA (n/k/a EFG Bank); EFG Bank SA Switzerland (n/k/a EFG Bank); EFG Eurofinancier d'Invest MCL (n/k/a EFG Bank (Monaco)); Banca Unione di Credito; BSI AG; and BSI Ex Banca del Gottardo (collectively, the "EFG Defendants"). I respectfully submit this declaration in support of the *Swiss and Monegasque EFG*

*Defendants' Supplemental Memorandum of Law in Support of Defendants' Renewed Motion to Dismiss* (the "Supplemental Brief").<sup>1</sup>

2. Attached hereto as Exhibit 1 is a list identifying the adversary proceedings in which the EFG Defendants were named as defendants and to which the Supplemental Brief applies.

3. Attached hereto as Exhibit 2A is a true and correct certified copy of the official commercial register extract for EFG Bank, dated February 19, 2020, obtained from the Office of the Commercial Register for the canton of Zurich. Attached hereto as Exhibit 2B is a true and correct copy of a certified English translation of the first and last page of Exhibit 2A, which indicates that, since May 7, 1969, EFG Bank has been registered with the stated purpose of operating "a bank and the activity of all transactions associated with a bank in Switzerland and abroad," including, among other things, "the assumption of funds in all customary banking forms, including savings deposits, granting secured and unsecured loans, [and] loans and advances . . ."<sup>2</sup> An uncertified version of EFG Bank's commercial register extract is available for download from the website of the Office of the Commercial Register for the canton of Zurich, which may be accessed at: <https://zh.chregister.ch/cr-portal/auszug/auszug.xhtml?uid=CHE-105.956.745>.

4. Attached hereto as Exhibit 3A is a true and correct certified copy of the official commercial register extract for Banca Unione di Credito, dated February 21, 2020, obtained from the Office of the Commercial Register for the canton of Ticino. Attached hereto as Exhibit 3B is a true and correct copy of a certified English translation of the first page of Exhibit 3A, which indicates that Defendant Banca Unione di Credito was registered with the stated purpose of

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<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Supplemental Brief.

<sup>2</sup> In Adversary Proceeding No. 10-03625, Defendant EFG Bank was identified by the Liquidators as "EFG Bank a/k/a EFG Bank AG and/or EFG Bank SA." In Adversary Proceeding Nos. 10-03635 and 10-03636, this same entity was identified by the Liquidators as "EFG Bank SA Switzerland." In Adversary Proceeding No. 10-03634, this same entity was identified by the Liquidators using a former name, "EFG Private Bank SA".

conducting “every type of banking business” from March 11, 1919 to December 28, 2006.<sup>3</sup> An uncertified version of the commercial register extract for Banca Unione di Credito is available for download from the website of the Office of the Commercial Register for the canton of Ticino, which may be accessed at: <https://ti.chregister.ch/cr-portal/auszug/auszug.xhtml?loeschung=20061228&uid=CHE-105.962.467>).

5. Attached hereto as Exhibit 4A is a true and correct copy of an excerpt from a certified copy of the official commercial register extract for BSI AG, dated February 21, 2020, obtained from the Office of the Commercial Register for the canton of Ticino. Attached hereto as Exhibit 4B is a true and correct copy of a certified English translation of the first page of Exhibit 4A, which indicates that BSI AG was registered, from March 11, 1992 until December 16, 2016, with the stated purpose of exercising “any kind of business and the assumption of transactions that fall under the business of a bank, in Switzerland and abroad.” An uncertified version of the commercial register extract for BSI AG is available for download from the website of the Office of the Commercial Register for the canton of Ticino, which may be accessed at: <https://ti.chregister.ch/cr-portal/auszug/auszug.xhtml?uid=CHE-105.736.244>.

6. Attached hereto as Exhibit 5A is a true and correct copy of an excerpt from a certified copy of the official commercial register extract for Banca del Gottardo, dated February 21, 2020, obtained from the Office of the Commercial Register for the canton of Ticino. Attached hereto as Exhibit 5B is a true and correct copy of a certified English translation of the first page of Exhibit 5A, which indicates that Banca del Gottardo was registered, from April 4, 1957 to June 26, 2008, with the stated purpose of exercising “banking activity”, including “all banking, financial consulting, services and commercial operations in Switzerland and abroad, offered to Swiss and

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<sup>3</sup> On December 28, 2006, Banca Unione di Credito was “cancelled as a result of the merger” with BSI AG.

foreign, private, commercial and institutional clients.”<sup>4</sup> An uncertified version of the commercial register extract for Banca del Gottardo is available for download from the website of the Office of the Commercial Register for the canton of Ticino, which may be accessed at: <https://ti.chregister.ch/cr-portal/auszug/auszug.xhtml?loeschung=20080626&uid=CHE-105.962.384>.

7. Attached hereto as Exhibit 6A is a true and correct certified copy of the official commercial register extract for EFG Bank (Monaco) S.A.M., dated February 4, 2020, obtained from the Register for Trade and Industry of the Principality of Monaco. Attached hereto as Exhibit 6B is a true and correct copy of a certified English translation of Exhibit 6A, which indicates that, since November 27, 1990, EFG Bank (Monaco) S.A.M., which was formerly known as EFG Eurofinancier D’Invest MCL, has been registered to conduct the following activity: “[I]n the Principality of Monaco and abroad, on its own behalf, on the behalf of third parties or in association, all operations regarding banking . . . .”<sup>5</sup> See Ex. 6B at 2. A copy of the commercial register extract is available to the public from the Monegasque Business Development Agency for a small fee. Certain information contained in the extract for EFG Bank (Monaco) S.A.M., including the activity for which it has been registered (*e.g.*, banking), may be viewed at <https://www.rci.gouv.mc/rc/ficheSGratuit.jsp?rc=90S02647>.

8. Attached hereto as Exhibit 7 is a true and correct copy of the Declaration of Yann Lajoux, dated March 12, 2020, concerning Monegasque law in relation to the Liquidators’ purported service on the Monegasque EFG Defendant.

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<sup>4</sup> On June 26, 2008, Banca del Gottardo was “cancelled as a result of the merger” with BSI AG. The Liquidators identified Banca del Gottardo as “BSI Ex Banca del Gottardo” in the complaints for Adversary Case Nos. 10-03635 and 10-03636.

<sup>5</sup> Exhibit 6B identifies EFG Bank (Monaco) S.A.M.’s prior name as “EFG Eurofinancier D’Investissements S.A.M.” See Ex. 6B at 7. The Liquidators identified this entity as “EFG Eurofinancier D’Invest MCL” in the complaints for Adversary Case Nos. 10-03635 and 10-03636.

9. This Declaration incorporates by reference paragraphs 17–18 and Exhibits 16–17 of the *Attorney Declaration of Thomas J. Moloney in Support of Defendants’ Renewed Motion to Dismiss* (the “Moloney Declaration”) as follows:

10. Exhibit 16 to the Moloney Declaration is a true and correct copy of the Swiss Federal Banking Commission’s list of authorized banks and securities dealers dated December 26, 2008, identifying each of “BSI SA” and “EFG Bank” as a “Bank.” This list of authorized banks and securities dealers may be accessed at, <https://www.finma.ch/FinmaArchiv/ebk/e/institute/index.html> (click on the icon adjacent to “List of authorized banks and securities dealers”).

11. Exhibit 17 to the Moloney Declaration is a true and correct copy of a letter from the Swiss Financial Market Supervisory Authority (“FINMA”), dated February 28, 2020, establishing that each of “BSI SA” and “EFG Bank AG” was “authorized to act as a bank” between January 1, 2004 and December 31, 2008. The letter further identifies “Banca del Gottardo” and “Banca Unione di Credito” as “entities authorized to act as . . . bank[s]” between January 1, 2004 and June 26, 2008, and January 1, 2004 and December 28, 2006, respectively.

Executed on March 23, 2020, at New York, New York.

/s/ D. Farrington Yates

D. Farrington Yates